



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 2, 2015

Michael G. Biddle
City Attorney's Office
1333 Park Avenue
Emeryville, CA 94608-3517

Re: Your Request for Advice
Our File No. A-15-120

Dear Mr. Biddle:

This letter responds to your request for advice on behalf of Emeryville Mayor Ruth Atkin regarding her duties under the Political Reform Act's (the "Act")¹ gift provisions.

QUESTION

May Mayor Atkin accept a gift of travel expenses from US-China Innovation ("USCI") to participate in the "Mayors of Silicon Valley on an Expedition to China"?

CONCLUSION

Payments for the travel, lodging and subsistence are reportable gifts, but not subject to gift limits because they will be provided in connection with a legislative or governmental purpose by a 501(c)(3) organization. Any other payments will be reportable gifts subject to gift limits.

FACTS²

Mayor Atkin and nine other California Mayors of South San Francisco Bay Area cities were invited to participate in "The Mayors of Silicon Valley on an Expedition to China," (the "Expedition") in July 2015, as part of an all-expenses paid economic development trip. US-Asia Innovation Gateway ("USAIG"), a non-profit corporation, is coordinating the Expedition but is not providing any funding for the Expedition.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Because we have previously advised on the specific travel in prior letters (*Bakker* Advice Letter A-15-092 and *Reyes* Advice Letter, No. A-15-087) and because of the imminent date of the travel, we incorporate some of the facts and analysis of the prior advice herein.

The Expedition includes payment of all travel related expenses including: international and domestic flights; food and beverages; lodging; ground transportation and structured meetings with Chinese investors and governmental officials. You estimate that the market value of the trip is roughly \$5,000 per participant.

- USCI is a California Nonprofit Mutual Benefit Corporation headquartered in Palo Alto and formed as a 501(c)(3) corporation. USCI's Articles of Incorporation state that USCI's purpose is to advance innovative technologies and promote the development and growth of innovative technology companies in the U.S. and China through education, collaboration and partnership.
- USCI will pay for all expenses associated with the Expedition.
- The Expedition is not intended to provide any personal benefit to the participants. The participants are attending as Mayors of their respective cities and in their official capacities.
- The Expedition is related to the specific governmental purpose of facilitating investment and international trade between China and the Silicon Valley cities.
- USAIG is a California Nonprofit Mutual Benefit Corporation headquartered in Santa Clara, California, and is a 501(c)(6) corporation. The stated mission of USAIG is to advance economic opportunities and investment between Asia and the United States. According to USAIG's website, USAIG works with elected officials and business leaders in Silicon Valley and throughout the United States to promote and advance economic opportunities and investment in Asia and the United States. USAIG specializes in these areas:
 - (1) Facilitate business development among emerging companies between US and Asia;
 - (2) Establish relationships between local government and the business community; and
 - (3) Promote trade exchange trips between the US and Asia.

ANALYSIS

Gifts, Generally

A gift is defined under Section 82028(a) as "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status." In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by local public officials in three ways:

- First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$460 from a single source in a calendar year. (Section 89503.)

- Second, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift of \$50 or more (or gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials' statements of economic interests. (Sections 87200 - 87210.)
- Third, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$460 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100 and 87103(e).)

Under the Act, generally any travel is presumed to confer some personal benefit on a public official. Consequently, travel costs paid for by a third party generally are reportable gifts. Therefore, absent an exception, the value of all travel-related expenses to China will be considered a reportable gift to each of the Mayors. (Section 82028.)

Under some circumstances, even though a payment for transportation, lodging, and subsistence may be a reportable gift under the Act, the gift is not subject to the Act's current \$460 gift limit. In this regard, Section 89506(a) provides in pertinent part:

“(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:

* * *

“(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit charitable or religious organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.”

1. Are the travel expenses reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy?

According to the itinerary for the Expedition, Mayor Atkin will travel to the Chinese cities of Beijing, Chengdu, Shenzhen, Dongguan, Guangzhou and Jiangmen for the purpose of facilitating investment and international trade between China and Emeryville. Mayor Atkin will participate in

the Expedition as a means to form relationships with Chinese government officials and businesses leaders in order to facilitate investment in Emeryville.

2. Are the travel expenses being provided by an entity described in Section 89506(a)(2)?

You stated that USCI is designated as a 501(c)(3) nonprofit public benefit corporation and that all expenses for transportation, lodging, and other subsistence for the participants will be paid for by USCI. Thus, the gift of travel to participate in the Expedition from USCI will comply with the exception in Section 89506(a)(2).

Please note the following:

1. The payments will still be reportable and could form the basis for a conflict of interest where the effect of a governmental decision by Mayor Atkin will have a financial effect on USCI.

2. Payments made for items other than travel and related lodging and subsistence, such as expenses paid for entertainment purposes while in China, may be considered a reportable gift subject to the \$460 gift limit because those items would not be related to a legislative or governmental purpose.³ If you have any questions regarding a specific payment of expenses, other than a payment for transportation to China and between locations, lodging, and subsistence, you may wish to seek additional advice describing the nature of the payment.

3. Please also note that if USCI were merely an intermediary for other donors, the gifts would be attributed to the true source, and Section 89506 may not apply. Regulation 18945(a) provides: “The person who makes the gift to the official(s) is the source of the gift unless that person is acting as an intermediary. The person is acting as an intermediary for the source of the gift when the gift to the official was provided under any of the following conditions: (1) the person receives a payment from a source and the payment is made to the official after the source identifies the official as the intended recipient of the gift; (2) the person receives a payment from a source after soliciting the payment with the understanding that the payment will be used for the sole or primary purpose of making a gift to an official; or (3) the person receives a payment from a source after the payment was solicited by the official or the official’s agent for the purpose of making a gift to the official.”

You have not provided any facts to suggest that USCI is simply acting as an intermediary for the payments or that they are provided by other sources.

³ See, *Reyes, Lawson, McClure, and Korb* Advice Letter, Nos. A-14-071, 14-072, 14-078 & 14-079.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: John W. Wallace
Assistant General Counsel,
Legal Division

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